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7

8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 JOSHUA S. LEONARD,
15 Defendant.

CASE NO. 1:20-CR-00026-NONE-SKO

PLEA AGREEMENT

DATE:

TIME: 8:30 A.M.

COURT: Hon. DALE A. DROZD

16
17 **I. INTRODUCTION**

18 **A. Scope of Agreement.**

19 The Superseding Indictment in this case charges the defendant with violations of 18 U.S.C. §
20 2261(a)(1) – Domestic Violence Within the Special Maritime and Territorial Jurisdiction of the United
21 States and 36 C.F.R. § 2.32(a)(1) –Interference with an Agency Function. This document contains the
22 complete plea agreement between the United States Attorney’s Office for the Eastern District of
23 California (the “government”) and the defendant regarding this case. This plea agreement is limited to
24 the United States Attorney’s Office for the Eastern District of California and cannot bind any other
25 federal, state, or local prosecuting, administrative, or regulatory authorities.

26 **B. Court Not a Party.**

27 The Court is not a party to this plea agreement. Sentencing is a matter solely within the
28 discretion of the Court, and the Court may take into consideration any and all facts and circumstances

1 concerning the criminal activities of defendant, including activities which may not have been charged in
2 the Superseding Indictment. The Court is under no obligation to accept any recommendations made by
3 the government, and the Court may in its discretion impose any sentence it deems appropriate up to and
4 including the statutory maximum stated in this plea agreement.

5 If the Court should impose any sentence up to the maximum established by the statute, the
6 defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all
7 of the obligations under this plea agreement. The defendant understands that neither the prosecutor,
8 defense counsel, nor the Court can make a binding prediction or promise regarding the sentence he will
9 receive.

10 II. DEFENDANT'S OBLIGATIONS

11 A. Guilty Plea.

12 The defendant will plead guilty to a superseding information charging him with a violation of
13 18 U.S.C. § 113(a)(4) – Assault by Striking, Beating, or Wounding. The defendant agrees that he is in
14 fact guilty of these charges and that the facts set forth in the Factual Basis for Plea attached hereto as
15 Exhibit A are accurate.

16 The defendant agrees that this plea agreement will be filed with the Court and become a part of
17 the record of the case. The defendant understands and agrees that he will not be allowed to withdraw his
18 plea should the Court not follow the government's sentencing recommendations.

19 The defendant agrees that the statements made by him in signing this Agreement, including the
20 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by
21 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a
22 guilty plea pursuant to this Agreement. The defendant waives any rights under Fed. R. Crim. P. 11(f)
23 and Fed. R. Evid. 410, to the extent that these rules are inconsistent with this paragraph or with this
24 Agreement generally.

25 B. Restitution.

26 The Mandatory Victim Restitution Act requires the Court to order restitution to the victims of
27 certain offenses. Defendant agrees that his conduct is governed by mandatory restitution pursuant to 18
28 U.S.C. § 2248, and agrees to pay the victim the full amount of her losses as a result of his conduct

1 charged in the Indictment, including all relevant conduct, as ordered by the court.

2 **C. Special Assessment.**

3 The defendant agrees to pay a special assessment of \$100.00. If the defendant is unable to pay
4 the special assessment at the time of sentencing, he agrees to earn the money to pay the assessment, if
5 necessary by participating in the Inmate Financial Responsibility Program.

6 **D. Violation of Plea Agreement by Defendant/Withdrawal of Plea(s).**

7 If the defendant violates this plea agreement in any way, withdraws his plea, or tries to withdraw
8 his plea, this plea agreement is voidable at the option of the government. If the government elects to
9 void the agreement based on the defendant's violation, the government will no longer be bound by its
10 representations to the defendant concerning the limits on criminal prosecution and sentencing as set
11 forth herein. A defendant violates the plea agreement by committing any crime or providing or
12 procuring any statement or testimony which is knowingly false, misleading, or materially incomplete in
13 any litigation or sentencing process in this case, or engages in any post-plea conduct constituting
14 obstruction of justice. Varying from stipulated Guidelines application or agreements regarding
15 arguments as to 18 United States Code section 3553, as set forth in this agreement, personally or through
16 counsel, also constitutes a violation of the plea agreement. The government also shall have the right (1)
17 to prosecute the defendant on any of the counts to which he pleaded guilty; (2) to reinstate any counts
18 that may be dismissed pursuant to this plea agreement; and (3) to file any new charges that would
19 otherwise be barred by this plea agreement. The defendant shall thereafter be subject to prosecution for
20 any federal criminal violation of which the government has knowledge. The decision to pursue any or
21 all of these options is solely in the discretion of the United States Attorney's Office.

22 By signing this plea agreement, the defendant agrees to waive any objections, motions, and
23 defenses that the defendant might have to the government's decision. Any prosecutions that are not
24 time-barred by the applicable statute of limitations as of the date of this plea agreement may be
25 commenced in accordance with this paragraph, notwithstanding the expiration of the statute of
26 limitations between the signing of this plea agreement and the commencement of any such prosecutions.
27 The defendant agrees not to raise any objections based on the passage of time with respect to such
28 counts including, but not limited to, any statutes of limitation or any objections based on the Speedy

1 Trial Act or the Speedy Trial Clause of the Sixth Amendment to any counts that were not time-barred as
2 of the date of this plea agreement. The determination of whether the defendant has violated the plea
3 agreement will be under a probable cause standard.

4 In addition, (1) all statements made by the defendant to the government or other designated law
5 enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal,
6 whether before or after this plea agreement, shall be admissible in evidence in any criminal, civil, or
7 administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no
8 claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal
9 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by
10 the defendant before or after this plea agreement, or any leads derived therefrom, should be suppressed.
11 By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.

12 **III. THE GOVERNMENT'S OBLIGATIONS**

13 **A. Recommendations.**

14 1. Incarceration Range.

15 The government is free to recommend any lawful sentence, including the maximum statutory
16 punishment, to the Court, consistent with 18 U.S.C. § 3553(a).

17 2. Sentencing Guidelines.

18 The parties agree that U.S.S.G. § 2A2.3 applies to the charged violation. The defendant
19 acknowledges that the government will argue that U.S.S.G. § 2A2.3(c)(1) directs the use of U.S.S.G.
20 § 2A2.2 in this case because the defendant's conduct constituted aggravated assault. The defendant
21 acknowledges that the government will argue that under either guideline, an enhancement applies
22 because the victim sustained bodily injury. This constitutes a 2-level enhancement under U.S.S.G.
23 § 2A2.3 and a 3-level enhancement under U.S.S.G. § 2A2.2.

24 3. Acceptance of Responsibility.

25 The government will recommend a two-level reduction (if the offense level is less than 16) or a
26 three-level reduction (if the offense level reaches 16) in the computation of his offense level if the
27 defendant clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G. §
28 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation of

1 the pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging
2 in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either in the
3 preparation of the pre-sentence report or during the sentencing proceeding.

4 **B. Use of Information for Sentencing.**

5 The government is free to provide full and accurate information to the Court and Probation,
6 including answering any inquiries made by the Court and/or Probation and rebutting any inaccurate
7 statements or arguments by the defendant, his attorney, Probation, or the Court. The defendant also
8 understands and agrees that nothing in this Plea Agreement bars the government from defending on
9 appeal or collateral review any sentence that the Court may impose.

10 **IV. ELEMENTS OF THE OFFENSE**

11 At a trial, the government would have to prove beyond a reasonable doubt the following
12 elements of the offense to which the defendant is pleading guilty, assault by striking, beating, or
13 wounding within the special maritime and territorial jurisdiction of the United States:

14 1. The defendant assaulted the victim by striking, beating, or wounding;

15 2. The defendant was present within the special maritime and territorial jurisdiction of the
16 United States;

17 The defendant fully understands the nature and elements of the crimes charged in the
18 Superseding Indictment to which he is pleading guilty, together with the possible defenses thereto, and
19 has discussed them with his attorney.

20 **V. MAXIMUM SENTENCE**

21 **A. Maximum Penalty.**

22 The maximum sentence that the Court can impose is 1 year of incarceration, a fine of
23 \$250,000.00, a 1 year period of supervised release and a special assessment of \$100.00. By signing this
24 plea agreement, the defendant also agrees that the Court can order the payment of restitution for the full
25 loss caused by the defendant's wrongful conduct. The defendant agrees that the restitution order is not
26 restricted to the amounts alleged in the specific count to which he is pleading guilty. The defendant
27 further agrees, as noted above, that he will not attempt to discharge in any present or future bankruptcy
28 proceeding any restitution imposed by the Court.

1 **B. Violations of Supervised Release.**

2 The defendant understands that if he violates a condition of supervised release at any time during
3 the term of supervised release, the Court may revoke the term of supervised release and require the
4 defendant to serve up to 1 additional year of imprisonment.

5 **VI. SENTENCING DETERMINATION**

6 **A. Statutory Authority.**

7 The defendant understands that the Court must consult the Federal Sentencing Guidelines and
8 must take them into account when determining a final sentence. The defendant understands that the
9 Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the
10 Sentencing Guidelines and must take them into account when determining a final sentence. The
11 defendant further understands that the Court will consider whether there is a basis for departure from the
12 guideline sentencing range (either above or below the guideline sentencing range) because there exists
13 an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into
14 consideration by the Sentencing Commission in formulating the Guidelines. The defendant further
15 understands that the Court, after consultation and consideration of the Sentencing Guidelines, must
16 impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

17 The defendant is free to recommend to the Court whatever sentence he believes is appropriate
18 under 18 U.S.C. § 3553(a). The government is not obligated to recommend any specific sentence other
19 than what is stated above.

20 **VII. WAIVERS**

21 **A. Waiver of Constitutional Rights.**

22 The defendant understands that by pleading guilty he is waiving the following constitutional
23 rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to
24 be assisted at trial by an attorney, who would be appointed if necessary; (d) to subpoena witnesses to
25 testify on his behalf; (e) to confront and cross-examine witnesses against him; and (f) not to be
26 compelled to incriminate himself.

27 **B. Waiver of Attorneys' Fees and Costs.**

28 The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-

1 119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the
2 investigation and prosecution of all charges in the above-captioned matter and of any related allegations
3 (including without limitation any charges to be dismissed pursuant to this plea agreement and any
4 charges previously dismissed).

5 **C. Impact of Plea on Defendant's Immigration Status.**

6 Defendant recognizes that pleading guilty may have consequences with respect to his
7 immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes
8 are removable offenses, including offense(s) to which the defendant is pleading guilty. The defendant
9 and his counsel have discussed the fact that the charge to which the defendant is pleading guilty is an
10 aggravated felony, or a crime that is likely to be determined to be an aggravated felony under 8 USC §
11 1101(a)(43), and that while there may be arguments that defendant can raise in immigration proceedings
12 to avoid or delay removal, it is virtually certain that defendant will be removed. Removal and other
13 immigration consequences are the subject of a separate proceeding, however, and defendant understands
14 that no one, including his attorney or the district court, can predict to a certainty the effect of his
15 conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty
16 regardless of any immigration consequences that his plea may entail, even if the consequence is his
17 automatic removal from the United States.

18 **VIII. ENTIRE PLEA AGREEMENT**

19 Other than this plea agreement, no agreement, understanding, promise, or condition between the
20 government and the defendant exists, nor will such agreement, understanding, promise, or condition
21 exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and
22 counsel for the United States.

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IX. APPROVALS AND SIGNATURES

A. Defense Counsel.

I have read this plea agreement and have discussed it fully with my client. The plea agreement accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to plead guilty as set forth in this plea agreement.


Dated: 8.13.20


JAMES HOMOLA
Attorney for Defendant

B. Defendant:

I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my case. No other promises or inducements have been made to me, other than those contained in this plea agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement. Finally, I am satisfied with the representation of my attorney in this case.

Dated: 8.13.20


JOSHUA S. LEONARD
Defendant

C. Attorney for United States:

I accept and agree to this plea agreement on behalf of the government.

Dated August 13, 2020

McGREGOR W. SCOTT
United States Attorney


MICHAEL G. TIERNEY
Assistant United States Attorney

EXHIBIT "A"

The defendant agrees that the following facts are true and that the Government can prove these facts beyond a reasonable doubt:

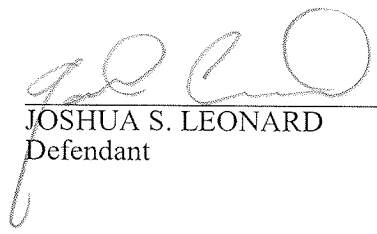
On or about January 1, 2020, Defendant LEONARD and victim F.W. were driving from Oakhurst California to Yosemite National Park on California State Route 41 in order to camp within the Park. The two began arguing. During the course of the argument, defendant hit F.W. several times in the face, arms, and legs. Defendant also threw the contents of a beverage onto F.W. and ordered her to remove her clothes. F.W. removed her clothing except for her undergarments. The defendant burned F.W.'s leg with a butane torch-style lighter. Defendant also threw F.W.'s bag (containing her cellular phone and other property) out of the car window.

The argument continued until the two arrived in the Wawona area of Yosemite National Park. At least one of the defendant's strikes to F.W.'s body occurred while the two were within the boundaries of Yosemite National Park and within the special maritime and territorial jurisdiction of the United States.

After they arrived in the Wawona area, the defendant told F.W. to get out of the car, and to take some of her possessions and a sleeping bag. F.W. spent the night outside in sub-freezing temperatures and reported the assault to Park staff the next morning.

At the time of the assault, defendant and F.W. were involved in a relationship of a romantic and intimate nature.

DATED: 8-7-20, 2020


JOSHUA S. LEONARD
Defendant